Mr. BURR. Mr. President, I ask unanimous consent to speak for up to an hour as in morning business.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

FAMILY SMOKING PREVENTION AND TOBACCO CONTROL ACT

Mr. BURR. Mr. President, I came to the floor last week for north of 5 hours and spoke about the bill that will be disposed of as this week goes on and, specifically, on an amendment that, though nongermane postcloture, the majority leader has agreed to hold a vote on. To me, this will be one of the most important votes Members in this body cast this year.

Again, I believe this is one of the most important votes Members in the Senate will cast this year. Let me try to say why. This is a debate about the regulation of tobacco and, to start with, Members need to be reminded that today this is not an industry without regulation. This is the current charted Federal regulation of the tobacco industry before we do anything. I point out that included in that regulatory structure is the Department of Transportation, Department of Treasury, Department of Commerce, Department of Justice, Office of the President, Department of Health and Human Services, Department of Education, Department of Labor, General Services Administration, Department of Veterans Affairs, Federal Trade Commission, Department of Agriculture, Environmental Protection Agency, U.S. Postal Service, and Department of Defense.

One, no Member can come to the floor and claim this is not a regulated product. It is the most regulated product sold in America today. I think there is consensus, and I agree, that we can do better than this maze of regulatory oversight in jurisdiction that is currently structured within the Federal Government, because it has been cobbled together as the Federal Government has grown, as new areas saw they had a piece of this pie, and they wanted some jurisdiction. We are throwing this regulatory structure away, and the proposal in the base bill, H.R. 1256, is to centralize this regulation of tobacco within the FDA.

For those who aren't familiar with the FDA, let me say the Food and Drug Administration regulates 25 cents of every dollar of the U.S. economy—25 percent of all of the products sold in the United States are regulated by this one agency.

FDA's core mission is this:

> Responsible for protecting the public health by assuring the safety, efficacy, and security of human and veterinary drugs, biologic products, medical devices, our Nation's food supply, cosmetics, and products that emit radiation.

Nowhere in there does it say tobacco, nor has it ever. A layperson would look at this and say if there is an agency whose responsibility it is to approve safety and effectiveness, for God's sake, you could not give them tobacco because they could never prove it was safe. It kills, and there is no dispute about that. We are trying to take a round peg and put it in a square hole. We are trying to find an agency that we think has punitive steps that they can take, but we are actually going much farther than that. You see, not only is there experience or expertise at the FDA to regulate tobacco, they are not. We are going to ask the FDA to surge, with their resources, their personnel, expertise, away from things such as lifesaving drugs, effective medical devices, and a responsibility to food safety at a time Americans have been killed because this agency couldn't effectively do their job. We are going to ask them to surge to handle a new product they have never, ever regulated.

As a matter of fact, the last FDA Commissioner, von Eschenbach, said this:

> The provisions in this bill—

I might say this was slightly over 2 years ago. As I have pointed out and talked about last week for over 5 hours on H.R. 1256, the authors of the bill didn't even change the dates in the bill from the bill written 2 years ago. As a matter of fact, the section by section is the same bill written 10 years ago. So I think it is appropriate, if they are going to use an effective date of February 2007, that I use the comments of the FDA Commissioner at the time, who said:

> The provisions in this bill would require substantial resources, and FDA may not be in a position to meet all of the activities within the proposed user levels. . . . as a consequence of this, FDA may have to divert funds from other programs, such as addressing the safety of drugs and food, to begin implementing this program.

This is not RICHARD BURR, this is the former Commissioner of the FDA saying we may have to divert funds from other programs, such as safety of drugs and food. If the American people are given this choice, they would say uphold the gold standard of the FDA. Let me go to bed at night as I take that medication my doctor prescribed and the pharmacist filled, and let me feel confident that the most qualified reviewer looked at that application, at the clinical trial date, and made a determination that this drug was safe and effective for me. Make sure when I go to the grocery store and buy food in a global marketplace, where the melons might have come from Chile or the spinach from Mexico, that they have the best and brightest addressing food safety.

They have already flunked that several times in the last 3 years, and we have all dealt with the consequences of it. But think about what we are getting ready to do. We are getting ready to make it worse. We are getting ready to take an agency that has a seal of approval, a gold standard, and we are getting ready to say we want you to maintain that gold standard on drugs, and food, and biologics, and medical devices, but we understand you cannot hold tobacco to the same threshold. So we want you to ignore the fact that tobacco kills, and we want you to regulate it as we prescribe it in legislation. How does H.R. 1256 prescribe this in regulation?

We will turn to this, which is my continuum of risk chart. It basically starts to my right, and your left, Mr. President. It has unfiltered cigarettes. You remember those. They had a risk of 100 percent. If you smoked them, there was a 100-percent likelihood that you were going to have a health problem from smoking.

Then the industry came up with filtered cigarettes, and they reduced the risk by 10 percent, from 100 percent to 90 percent. But when one is looking for a way to play this, a 90-percent risk is not a good one.

What H.R. 1256 says is: OK, we realize FDA is not the right agency, but we are going to place it there anyway, and we are going to tell the FDA: We want you to leave this alone; we don't want you to touch this 100-percent risk or 90-percent risk. We want to grandfather all the products that were made before February 2007. And, oh, by the way, that would include U.S. smokeless tobacco.

The most risky we are grandfathering in and we say to the FDA: You can't change it. You basically can't regulate it. You can't regulate the 100 percent, you can't regulate the 90 percent, and you can't regulate this small but growing U.S. smokeless market that has a risk of 10 percent.

One might look at the chart and say there are other things on there. There are electronic cigarettes, tobacco-heating cigarettes, Swedish smokeless snus. There are dissolvable and other products that have less risk. All those products in February 2007 were not in the marketplace. They are banned. They are eliminated.

What are we asking the FDA to do? We are asking them to grandfather three categories of products and let all adults who choose to use a tobacco product choose from the most risky categories.

What are we saying to the 40 million Americans who smoke today? If you are in this category of using cigarettes, we are not going to give you any options as to what you turn to as you realize that is not the best thing for your health. We are going to lock you in and hope it kills you fast so our health care cost goes down.

Any claim—any claim—that H.R. 1256 reduces the cost of health care is only because we have grandfathered in smokers who will die sooner, not that we have allowed them a pathway through this bill to ever experience not only products that are currently on the marketplace that reduce the risk from 100 percent to as little as 1 percent, but we have completely eliminated any additional innovation in product in the

future that would allow somebody to get from 100 percent to 1 percent and actually be a healthier American.

I am not on the floor today suggesting that regulation is not in order. It is in order. At 4:20 p.m. today, Members of the Senate will have an opportunity to vote on a substitute amendment that has several changes from this current bill. One, it does not centralize the jurisdiction in the FDA. It creates, under the Secretary of Health and Human Services, a new agency called the Harm Reduction Center. Its sole job is to regulate tobacco. It regulates tobacco more specifically than does the FDA under H.R. 1256. But what it does allow is the development of new products that might encourage individuals to give up smoking and to turn to products that are less harmful.

Here is a list of the organizations that support tobacco harm reduction: The American Association of Public Health Physicians, 2008; the World Health Organization, 2008; the Institute of Medicine, 2001; the American Council on Science and Health, 2006; the New Zealand Health Technology Assessment, 2007; the Royal College of Physicians, 2002, 2007; Life Sciences Research Office, 2008; Strategic Dialogue on Tobacco Harm Reduction Group, 2009—this year.

People around the world are talking about reduced harm, except in the Senate. As a matter of fact, we don't need to look far across the pond before we find Sweden. During the past 25 years, Swedish men have shown notable reductions in smoking-related diseases: a decline in lung cancer incidence rate to the lowest of any developed country; no detectible increase in oral cancer rate; improvement in cardiovascular health. Tobacco-related mortality in Sweden is among the lowest in the developed world.

Why? Every Member of this Congress should ask why. Because the sponsors of this bill have said this is what we are trying to do in the United States.

How did Sweden do it? It is very simple. Sweden did it by allowing these products to come to market. As a matter of fact, Swedish smokeless snus is currently on the market in the United States. I am not going to tell you the market share is big, but I can tell you this. The risk of death or disease is less than 2 percent. But under H.R. 1256, which the Senate may or may not adopt this afternoon, what we would do is we would eliminate Swedish snus, and we would lock smokers into the categories that are currently on the market, all because of an arbitrary February 2007 date because somebody was too lazy to change the bill.

Think about that: that we would take something Sweden found over 25 years had been an incentive to get people off cigarettes and move toward other products, to the degree that, in Sweden, they had a decline in lung cancer, they had no detectible increase in oral cancer, and they had an improvement in cardiovascular health; that tobacco-related mortality in Sweden is among the lowest in the developed world. Why is that? Because the authors of H.R. 1256 suggest that new product innovation can happen, and I would tell you there are three thresholds one has to meet for new products to come on the market. I will not talk about the first two. I will focus on the third one.

The third one is this: that to have a product approved to be placed on the market, a company has to prove that a nontobacco user is no more likely to use that new product if that product is available. Then it goes on to say, in great congressional form, that unless you have an application that has been approved, you cannot engage the public on a product that has not been improved.

How does one do a clinical study that proves to the FDA that no American is more likely to use tobacco on a product that wasn't in the marketplace if, in fact, you can't talk to them about the product until it is approved? It is a Catch-22.

The authors of this bill knew exactly what they were doing. Let me say it again. The authors of this bill knew exactly what they were doing.

What has changed over the weekend since I was out here for 5 hours-plus last week? Public health experts around the country are beginning to read the bill and they are beginning to go: Oh, my gosh. Do not pass this. This is a huge mistake. As a matter of fact, I will get into it in a little while. I have plenty of time that I am going to spend on it.

Understand there are only three reasons we would consider new additional regulations: to reduce the rate of disease and death and to reduce the prevalence of youth access to tobacco products and specifically smoking.

I know the Presiding Officer heard me say this last week. This is my chart of 50 States. In 1998, the tobacco industry came to a settlement with States called the Master Settlement Agreement, MSA. In that agreement, they committed $280 billion to defray the cost of health care for the States—specifically, their Medicaid costs—and also provided money to make sure they could have cessation programs to get people to quit smoking and to make sure youth access, youth prevalence went down.

These are the CDC levels for last year, and I might say the CDC makes a recommendation to every State at the beginning of the year as to how much they should spend on programs that encourage youth not to smoke. I am just going to pull randomly a few States.

Connecticut: Of the CDC recommendation, Connecticut spent 18.9 percent of what the CDC recommended; 21 percent of the youth in Connecticut have a prevalence of smoking; 23.2 percent of the youth in Connecticut have a prevalence of marijuana usage.

The Presiding Officer's own State, Illinois: Of the CDC recommendation of what Illinois should spend on youth prevention, Illinois spends 6.1 percent; 19.9 percent of the youth have a prevalence to smoke. They are at 23.3 percent who have a prevalence of marijuana use.

In Missouri, of the CDC recommendation on how much should be spent on the prevalence of youth smoking, Missouri spent 3.7 percent; 23 percent of the youth have a prevalence of smoking; 19 percent a prevalence of marijuana use.

I can see that the Presiding Officer gets where I am going. We have constantly, since 1998, with the money provided by the tobacco industry to the States, chosen to build sidewalks over promoting programs to reduce youth prevalence of smoking. Now the authors of this bill would have us suggest that by allowing the FDA to have regulation of tobacco, the prevalence of youth smoking is going to go down because now we have one Federal agency that will have total jurisdiction over this product.

Let me say this: If that were the case, the prevalence of marijuana usage by youth would be zero because it is illegal. There is no age limit. As a matter of fact, there is no agency need for jurisdiction because nobody in America—adult or youth—is supposed to use it. It is a myth for us to believe the authors of this bill that by simply dumping this in the FDA, somehow youth prevalence of smoking goes down. It is a joke. It is a joke, and the public health community has now recognized this.

In 1975, Congress commissioned the University of Michigan to track youth smoking rates. At that time, youth smoking was at an alltime high. However, those rates started coming down and leveled off around 30 percent all the way up to 1993. For some unknown reason at that time, youth smoking started to rise and peaked at an alltime high in 1997. In 1998, 12th graders who said they tried a cigarette in the last 30 days was approximately 36 percent, according to the University of Michigan.

Congress didn't have a good sense of why this was happening. Opponents of the tobacco industry started blaming all this on the alleged manipulation of young people by tobacco manufacturers through sophisticated marketing and advertising.

The tobacco industry has a checkered past, I will be the first to admit that, when it comes to advertising in the market. But what I am suggesting is, it may not have been all due to tobacco marketing. There was another trend occurring during the 1993 to 1998 period that virtually mirrored that of youth smoking. It was the increase in illicit drugs in the United States.

Let me say that again. What mirrored the trend from 1993 to 1998 of the increase in youth smoking was the increase of use of illicit drugs by teenagers. Something much broader was happening among our country's young people.

The Senate's answer to the smoking rate increase was to pass this initiative, to give FDA jurisdiction.

Senator KENNEDY made the following remarks during the 1998 Senate floor debate to emphasize the need to protect kids. Let me quote him:

FDA Commissioner David Kessler has called smoking a ''pediatric disease with its onset in adolescents.'' In fact, studies show that over 90 percent of the current adult smokers began to smoke before they reached the age of 18. It makes sense for Congress to do what we can to discourage young Americans from starting to smoke during these critical years. . . . Youth smoking in America has reached epidemic proportions. According to a report issued last month by the Centers from Disease Control and Prevention, smoking rates among high school students soared by nearly a third between 1991 and 1997. Among African-Americans, the rates have soared by 80 percent. More than 36 percent of high school students smoke, a 1991 year high. . . . With youth smoking at crisis levels and still increasing, we cannot rely on halfway measures. Congress must use the strongest legislative tools available to reduce youth smoking as rapidly as possible.

Well, the Senate told the American public that the passage of a massive FDA tobacco regulation back in 1998 contained the strongest legislative tools available to address youth smoking issues.

By the way, they have decreased since 1998—youth smoking has decreased. As a matter of fact, overall smoking has decreased. I don't want anybody to think there is no light at the end of the tunnel. As a matter of fact, what this shows is a comparison—a study done by the Centers for Disease Control and Prevention and then a Congressional Budget Office estimate after reviewing the Kennedy bill, or Waxman bill, H.R. 1256. What the CDC said was that if we do nothing, we reduce smoking to 15.97 percent by 2016, and the Congressional Budget Office, under H.R. 1256, said that if we pass the Kennedy bill, the rate would be 17.80 percent. As a matter of fact, I miscalculated when I put the chart together, and it is actually 2 percent higher, meaning we do 4 percent better if we do nothing.

You see, my point is this, and it is exactly what I said at the beginning: The authors of this bill said its purpose is to reduce the risk of death and disease and to reduce youth smoking. I would tell you that a caveat to that should be that we should reduce smoking. Clearly, the Centers for Disease Control and Prevention says that if you do nothing, it goes to this point, and the Congressional Budget Office, after looking at the bill, suggests it is 2 percent or 4 percent higher if, in fact, we pass the bill. Why is that? How could it possibly be higher if you pass legislation that is supposed to fix it? Well, it is for this reason: It is because of what H.R. 1256 does. It is not a public health bill. It is a bill that locks in the most risky products and grandfathers them to the Food and Drug Administration and allows no pathway for reduced-harm products to come to market. It actually takes some reduced-harm products that are currently on the market, that haven't been sold since February 2007, and says, therefore, they are gone. There is no ability for the FDA to look at this product and say: My gosh, in the name of public health, let's keep this product on the market, because the Senate is legislatively telling the FDA what to do.

Why does it matter what agency we put this in? If Congress believes they can fix it, then why haven't they fixed it up until now? If writing a bill that legislates how to fix it would work, why haven't we done it? Well, I would contend that all I have to do is go to this chart of 50 States, and for the majority of the States the prevalence of marijuana usage is higher than the prevalence of youth smoking, which tells you there is no regulatory body that can eliminate the usage of an illegal product by those who choose to use it, unless—unless—it is through education. There is no education in H.R. 1256. Let me say it again: There is no education in H.R. 1256.

If the goal is to reduce the risk of death and disease and education is the only way to accomplish that, if the goal is to reduce youth prevalence of smoking and the only tool to accomplish that is education, then I ask the sponsors to come to the floor and show me where the education is in FDA regulations.

I am on day 5 now—maybe day 6 if you count that I was here for a short period of time last Monday, but I didn't make it yesterday, Monday—day 6, and I have yet to have anybody come to the floor and ask a question, refute anything I have said or question the facts I have produced. Why? Because I am using the same agencies most Members come to the floor and reference: the Centers for Disease Control and Prevention and the Congressional Budget Office. It is hard to say that they are wrong, that they are not reputable entities within the Federal Government, and then turn around next week and bring your own statistics using the same entities we use as a gauge.

One can question whether the Royal College of Physicians came to the right conclusion when they said:

In Sweden, the available low-harm smokeless products have been shown to be an acceptable substitute for cigarettes to many smokers, while ''gateway'' progression from smokeless to smoking is relatively uncommon.

Let me say that again: ''. . . while gateway progression from smokeless to smoking is relatively uncommon.''

Some authors of H.R. 1256 have come to the floor and said: Well, my gosh, if we let reduced-harm products come to the marketplace, this is going to create a gateway to youth usage of tobacco products that will eventually turn them into smokers.

Read the substitute bill. The substitute bill requires the Reduced Harm Center to actually list for the American public the most risky tobacco products and the least risky. The bill that consolidates all this jurisdiction for tobacco within the Food and Drug Administration doesn't even require the Food and Drug Administration to rank the most risky products. Why? Because those are the ones we have grandfathered. We have said they can't touch them.

Compassion would tell you that if you want people to switch from smoking and give it up, you have to give them a tool to get there. But what we have said is that the future will consist of no new tools except those manufacturers that were on the market before February 2007—some magical date in history we will all look back on and probably find that to blame as to why this program doesn't work.

In a little over an hour, we will have an opportunity to come to the floor and to vote on the substitute. Let me say to my colleagues, if you want a real public health bill, vote for the substitute. If you want to reduce the prevalence of youth smoking, vote for the substitute. If you want to reduce the rate of death and disease, vote for the substitute. Don't just listen to me, listen to public health experts and authors who now have written on this issue.

This happens to be a book—and I am not sure how long ago it was published, although I am sure I can probably find that out—that I think I spent $50 today to get, either that or it is on loan. That seems like a lot of money, but the truth is, it is a book about how the Senate of the United States is getting shafted. It is a book about the collusion that happened behind closed doors between the authors of this bill and Philip Morris. It is written by an author named Patrick Basham. I want to read a few things he has printed in his book.

Handing tobacco regulation over to the FDA, as Congress is poised to do, is an epic public health mistake. It is tantamount to giving the keys of the regulatory store to the Nation's largest cigarette manufacturer.

It goes on:

There are significant and numerous problems with the FDA regulating tobacco and virtually no benefits to public health.

Let me say that again.

There are significant and numerous problems with FDA regulating tobacco and virtually no benefits to public health.

Do you get it? I mean, if you are going to bill it as a public health bill, for God's sake, put something in there that is to the benefit of the public health of this country.

Mr. Basham goes on to say:

Kennedy, Waxman, and the public health establishment present their legislation as a masterful regulatory stroke that will end tobacco marketing, preventing kids from starting to smoke, make cigarettes less enjoyable to smoke, and reduce adult smoking. But FDA regulation of tobacco will do none of these things.

This is not a fan of the tobacco industry. This is an author, an individual, who has been covered in numerous publications. He is an adjunct

scholar with the Cato Center for Responsible Government. He is a lecturer at Johns Hopkins University. He has written a variety of policy issues, and his articles have appeared in the New York Times, the Washington Post, USA Today, the New York Post, and the New York Daily News, just to name a few. His book is titled ''Butt Out! How Philip Morris Burned Ted Kennedy, the FDA & and the Anti-Tobacco Movement.'' This is no fan of tobacco. This is a guy who is calling balls and strikes. He is one person who is so concerned about the public health in this country and making sure what we do accomplishes good public health policy that he is willing to be outspoken.

He goes on in his book and says this:

The process of validating new reduced-risk products appears to be designed to prevent such products from ever reaching the marketplace, thus giving smokers the stark, and for many the impossible, choice of ''quit smoking or die.''

You might want to remember that part. We can now call the continuum of risk ''quit or die.''

Rather than making smoking safer for those who continue to smoke, it will deny smokers access to new products that might literally save their lives. That is hardly a sterling prescription for good public health.

If the objective is public health, H.R. 1256 falls way short. Even if the idea of FDA regulation were good in theory and practice, several things, including the FDA's competence in tobacco policy and science, its public image, its fit with the tobacco file, its available resources, and its overall current competence, argue strongly against giving it regulatory responsibility for our Nation's tobacco policy.

This is a scholar, Mr. President.

FDA regulation of tobacco need not be a public health tragedy, however. By bringing the crafting of tobacco policy out into the light of day, by taking it out of the hands of the special interests and, most importantly, by keeping it away from the FDA, there is every opportunity to begin to create a policy that not only serves the interest of nonsmokers and smokers, but a policy that might really work.

To Senators of the U.S. Senate: If you want a policy that really works, do not adopt H.R. 1256. Consider strongly the merits of the substitute amendment, which does focus on the public health of this country.

Mr. Basham is a professor who studies and writes on a variety of topics, and when he took an objective view of the situation, he saw H.R. 1256 for what it was. He saw it as misguided legislation.

Our amendment—mine and Senator HAGAN's—accomplishes exactly what Mr. Basham raises. Our amendment sets up a new agency under the auspices of HHS and a Secretary who will examine all tobacco products and set up a regulatory framework that will save lives. That is in the public health interest of America. We don't preclude new reduced-risk products from entering the marketplace. We do not preclude reduced risk products from coming into the marketplace; H.R. 1256 does. We mandate the Tobacco Harm Center post the relative risk of each tobacco product currently on the market. Wouldn't that be incredible if we had a ranking between cigarettes and all the other things? We wouldn't need that if H.R. 1256 passed because we would only have nonfiltered cigarettes, filtered cigarettes, and smokeless tobacco. I can tell you the ranking would be unfiltered cigarettes the worst, filtered cigarettes next to the worst, and smokeless third. Those are the choices that adults would have in this country, and for somebody who is addicted to smoking, if smokeless wasn't something that enticed them to quit smoking, they would be left out because the legislation does not create a pathway for new products.

We also give current users the information they need to decide whether they want to migrate from a more harmful product, such as cigarettes, to less harmful products.

I have heard my colleagues and many other advocacy groups boast how the underlying bill will give the FDA authority to remove toxins in cigarettes, boast how granting the FDA the ability to regulate advertising will encourage people to not use, and current smokers to quit.

I agree, better warning labels will act as a deterrent to nonsmokers. But what about current smokers? Dr. Basham sites a very interesting study conducted in Canada and the United States by an independent organization. The study consisted of showing smokers packages of their current cigarettes with an increased warning label and graphic pictorials of cancer and other diseases. The study concluded that no statistically significant change in smoking behavior could be expected to be followed from the redesigned packages.

If you have noticed, over this 45 minutes, so far, I have sort of knocked all the things out that the sponsors of this bill said it accomplished. It does not do any of them. It does do one thing: it grandfathers the most risky products and consolidates their regulation at the FDA. It does not reduce risk of death, disease, or youth prevalence of smoking.

Since H.R. 1256 bans any reduced risk smokeless products from entering the marketplace, it locks current smokers only into cigarettes. However, our amendment does not lock them into just cigarettes. We provide this consumer with the ultimate amount of choice. The purpose of my amendment, as I said, is to reduce the risk of death and disease and to reduce youth prevalence of smoking.

The regulated products under my amendment? All tobacco and nicotine products. There are no holes in the substitute. It covers the entire scope of tobacco products. New smoking provisions in H.R. 1256, ''change current tobacco advertising to black and white only and require graphic warning labels on packages of cigarettes.''

We require graphic warning labels on the package of cigarettes, and we eliminate print advertising. Somehow the authors of this bill would have us believe if we go from color to black and white advertising that people under 18 actually will not read it or can't read it. Maybe today's youth can only read in color. But they suggest theirs is a stronger regulatory bill. But the substitute eliminates print advertising. No longer will the Vogue magazine that a mom finds in the grocery store attractive, that might not be one of those publications that is considered a publication that youth would purchase, but a 14-year-old might go to her mother's Vogue magazine and flip open and see a tobacco ad by mistake—it can't happen under the substitute legislation. It will happen under H.R. 1256, but only in black and white.

H.R. 1256 uses user fees to fund the FDA, about $700 million over 3 years. We asked the Secretary of Health and Human Services: How much do you need to stand up a complete new agency that is only focused on tobacco legislation? One hundred million dollars a year because these fees that we charge the tobacco companies are passed on to the consumers, the people least likely to fund it, the ones who are already funding the Children's Health Insurance Program, funding the majority of the State Medicaid programs. Let's give these folks a break. Let's not put this entire burden on their backs, especially if it is not going to do any good.

It is not just Mr. Bashan. As a matter of fact, Brad Rodu wrote, March 26—Brad Rodu, the Endowed Chair of Tobacco Harm Reduction Research, School of Medicine, University of Louisville—I will read a couple of excerpts of what he wrote.

According to the American Association of Public Health Physicians, the bill ''will do more harm than good in terms of the future tobacco-related illnesses and death.'' While the AAPHP favors ''effective regulation of the tobacco industry. . . . This bill does not meet this standard.'' The bill, introduced by Rep. Henry Waxman, is supported by medical groups that are engaged in a crusade against the tobacco industry. That's the problem: In a blind desire to kill tobacco manufacturers, the Waxman bill may end up hurting smokers.

It goes on and on. Again, an endowed chair of a major academic institution says don't do this.

How about Michael Siegel, Professor in the Social and Behavioral Sciences Department at—get this—Boston University School of Public Health, home of the authors of the bill. The Los Angeles Times, op-ed, June 3—not long ago. Let me read a couple of excerpts out of Mr. Siegel's op-ed.

In the end, it ensures that federal regulation of tobacco products will remain more about politics than about science.

H.R. 1256 gives the FDA the ability to lower nicotine levels in cigarettes. Since H.R. 1256 locks current users into cigarettes only by banning reduced risk products, H.R. 1256 ensures that 40 million Americans who currently smoke are doomed to death and disease associated with cigarette smoking. H.R. 1256 will cost lives, not save lives.

This is a professor in the Boston University School of Public Health, talking about his Senator's bill. He goes on to say:

Even worse, by giving a federal agency the appearance of regulatory authority over cigarettes without the real ability to regulate, the legislation would seemingly create a FDA seal of approval for cigarettes, giving the public a false sense of security about the increased safety of the product.

In fact, the bill's crafters are apparently so worried about the harmful effects of such a public perception—

Get this—

that they have written a clause into the bill that prohibits the cigarette companies from even informing the public that cigarettes are regulated by the FDA or that the companies are in compliance with FDA regulations.

The legislation forbids a company from even referring to the regulator. He goes on to say:

This is clearly an unconstitutional provision, as it violates the free speech rights of the tobacco companies; nevertheless, it suggests that even the supporters of the legislation are aware that the bill creates a false perception of the increased safety of cigarette smoking.

There is a charge I have not made. The bill is actually unconstitutional. When we recognize things as unconstitutional, I know it is the inclination of some Members of the Senate to wait and have it passed and somebody refer it to the Supreme Court so the Supreme Court can tell us it is unconstitutional. When scholars tell us it is unconstitutional, I believe our responsibility is then: don't pass it, don't do it.

Let me conclude with Michael Siegel, professor in the School of Public Health, Boston University.

During the previous administration, the FDA was accused of making decisions based on politics, not health. If the Senate passes the FDA tobacco legislation, it will be institutionalizing, rather than ending, the triumph of politics over science in federal policymaking. This is not the way to restore science to its rightful place.

I am not saying it. It is a professor from the School of Public Health at Boston University.

What is this bill about? Its author said reducing the rate of death and disease and prevalence of youth smoking. Michael Siegel's assessment: It is about politics.

Patrick Bashan's conclusion in ''Butt Out,'' the book: It is about politics. As a matter of fact, it says on the back of the book:

Philip Morris outwitted this coalition of useful idiots at every turn.

The decision in front of Members of the Senate is simple. Do you want to reduce the risk of death? Do you want to reduce the risk of disease? If you want to reduce the prevalence of youth smoking you only have one chance, and that is support the substitute amendment.

If you want to do politics as usual, if you want to let politics trump science, if you want to lock in a category of products that have a high likelihood of risking the American people, if you want to ignore the research from around the world that suggests by allowing lower harm smokeless products on the marketplace it allows smokers to get off the tobacco products, support H.R. 1256.

I believed 5 days ago when I came to the Senate floor that was all I needed to put up to win this debate. I actually believed that was all I needed to put up for the American people. I have learned over the past 5 days just how stubborn Members of the Senate are. I hope that now, after 6½ hours of coming to the Senate floor on this one bill, staff members through every office—Republican, Democrat, and Independent—have taken the opportunity to check the facts that I have presented, and they have found I am right; they have found a study did exist in Sweden. I didn't make it up; they have found that CDC did do a study—if we did nothing we would reduce smoking more than if we pass this bill; they have found that in Sweden, people did become healthier because of the decision to use smokeless products.

I thought this was all it took for the American people to understand it; that you can't take an agency of the Federal Government that is ''responsible for protecting the public health by assuring the safety, efficacy and security of human and veterinary drugs, biologic products, medical devices, our Nation's food supply, cosmetics and products that emit radiation''—it is impossible to take an agency where that is their core mission and give them a product where you ask them to ignore the gold standard on everything else they regulate. I think the American people would say it seems reasonable to create a new entity to regulate tobacco, if for no other reason than—if you didn't believe any other science that I have shown and the data that has been proven—if for no other reason than why would we jeopardize this gold standard? Why would we make one American at home wonder whether that pharmaceutical product they were taking was actually safe or effective?

Why would we have them question for a minute whether that medical device was approved and reviewed by the most seasoned reviewer versus maybe somebody who was fresh on the job because that seasoned person went over to regulate tobacco products?

Why would we put the American people in a more difficult situation today on their question of food safety with the incidents we have had of death in the United States of America because the Agency could not quite meet their mission statement?

Why would we dump on them now? Why would we do this to the American people? It is beyond me. But when you turn to some of the folks who have written on this issue—whether it is Brad Rodu, whether it is Patrick Basham, whether it is Michael Siegel, in the public health department at Boston University—I guess the only answer is, it is politics over science, that for 10 years people have said we have to put this in the FDA, that Matt Meyers, head of Campaign for Tobacco-Free Kids, is the most powerful ''U.S. Senator'' because he is getting his wish, he is getting exactly what he has been trying to do for decades. He is not a science expert. If he was, he would be voting for the substitute, if he were here.

He wrote the bill. I am surprised he did not catch the mistake of February 2007. Nobody caught that. But the truth is, the bill has not changed much in 10 years, though the world has changed a lot. The science has changed a lot. Health care has changed a lot.

There is a real opportunity to do the right thing in the Senate. But Members will have to show a degree of independence and vote for the substitute and not wait for the base bill. I hope Members will heed the words of people who have no dog in this fight who have suggested, if we pass this bill—not the substitute, the base bill—we will have done a great disservice to the public health of America. More importantly, we will have done a disservice to those individuals to get locked into these categories, as shown on this chart, because their certain future is death and disease. They are counting on us. They are. They are counting on us to do the right thing.

I can leave this debate tonight and say: I left nothing in the bag. I have tried everything to convince my colleagues not to make a huge mistake. I will sleep well tonight. If this substitute does not pass, if H.R. 1256 passes and becomes law, it is others who are going to have to live with the way they voted. When people die because of what they did, it is others who are going to have to live with it.

There are going to be more articles. This is just the tip of the iceberg of health professionals, of public health individuals, people who detail in great quantity exactly what has been going on. As a matter of fact, as they say, the wool has been pulled over our eyes. Well, it has not. That is why we have a substitute amendment. That is why the majority leader allowed a nongermane amendment to come to the floor. Well, it might have had something to do with that he did not have the votes for cloture without allowing it to come to the floor, but I give him the benefit of the doubt that he understood this was an important debate to have, that this was worth extending the opportunity for people to vote up or down.

I see my colleague is here to speak, and I am not going to prolong this debate. In less than an hour, Members will have an opportunity to come to the floor. Most Members will get probably 2 minutes equally divided; 60 seconds to hear what it has taken me 6 hours to say in this debate. Clearly, that is not much time. But now it is in their hands. It is a decision Members of the Senate will have to make about the future of the public health policy of this country.

I urge my colleagues, on both sides of the aisle, to support the substitute amendment today at 4:20 and make sure the future of our country is one we will be proud of and not one we will find as an embarrassment.

I yield the floor.

The PRESIDING OFFICER (Mr. UDALL of Colorado). The Senator from Nebraska.

Mr. JOHANNS. Mr. President, I ask unanimous consent to speak in morning business.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

MIDDLE CLASS TAX

Mr. JOHANNS. Mr. President, I rise this afternoon to speak about the President's announcement a few hours ago relative to pay-go.

Today, the President said:

> Paying for what you spend is basic common sense. Perhaps that's why, here in Washington, it has been so elusive.

Well, I could not agree more. But I must ask: Where was that common sense when the President proposed to add $10 trillion to the national debt in the fiscal year 2010 budget submission? Where was this basic common sense when he signed a bill earlier this year that adds $1 trillion in debt this year alone? Where was this newfound fiscal discipline when he proposed a massive universal health care proposal that is now turning out to be a government-run proposal with just a downpayment of $650 billion?

The President's announcement undoubtedly was meant to quell rising fears about the amount of spending and borrowing his administration has undertaken. It was likely intended to calm the fears of those who buy our debt who are wondering if it is just paper.

But do the President's words today in any way address the mountain of debt and increased taxes he proposed and supported just a few weeks ago with the budget submission? The answer to that is no.

Today's announcement does absolutely nothing to decrease the rising, crushing debt we have accumulated. In fact, this President has significantly added to our debt, causing it to rise to an unprecedented level, an unsustainable level. Let me repeat that. The President's announcement does absolutely nothing to address our record spending and borrowing. This is akin to maxing out on the personal credit card and then promising not to use it anymore but offering no plan to pay off the balance.

The President rightly pointed out today:

> The debate of the day drowns out those who speak of what we may face tomorrow.

Maybe it is an appropriate time to thoughtfully consider what we face tomorrow because of the unpaid credit card balance.

It is important to dissect the rhetoric and speak to Americans who have been promised something I would suggest the President cannot deliver. Remember that those in the so-called middle class—and the definition of that has changed—have been told they will be shielded from tax increases. Well, I would suggest the evidence is obvious. The rug is about to be pulled out from underneath them by the President's explosive growth in spending and borrowing.

If Congress continues to follow the President's unlimited spending spree and tries to balance the budget at the same time, the middle class will get hammered with tax increases. This, I would suggest, is the elephant in the room that no one in the Obama administration wants to discuss for fear of the consequences.

But the American people deserve an open discussion about the real-life consequences of big government and the runaway freight train of spending and borrowing that comes with bigger government.

Supporters of the current budget claim that only individuals earning more than $200,000 will see their taxes go up; therefore, there will be no tax increase on the middle class. Yet such a tax on higher income earners still results in an average annual deficit hovering around $1 trillion per year for the next 10 years, described by many to be unsustainable.

Our national revenue simply cannot keep up with the bloated spending in the budget, and that is resulting in a shortfall.

Let me illustrate this in an example. This is equivalent to a Lincoln, NE, teacher earning $33,000 per year but spending $58,000 per year—year after year. It cannot last long. So is the Obama administration going to continue this spending increase with only the revenue from the so-called rich? How can they continue running annual deficits with no end in sight? They cannot. Inevitably, the spending spree and exploding deficits will land squarely on the middle class in the form of higher taxes, unless we do something.

The reality is, the Obama administration cannot continue the unprecedented level of spending while claiming to hold the middle class harmless.

If you do not believe me, listen to leading economists.

Martin Sullivan, a former economic aide to President Reagan, actually, who backed President Obama last fall, said:

> You just simply can't tax the rich enough to make this all up.

He went on to say:

> Just for getting the budget to a sustainable level, there needs to be a broad-based tax increase.

Leonard Burman, director of the liberal Tax Policy Center, said:

> [T]here's no way we're going to be able to pay for government 10, 20 years from now without coming up with a new revenue source.

Finally, economist Paul Krugman, a New York Times columnist, wrote:

> I, at least, find it hard to see how the federal government can meet its long-term obligations without some tax increases on the middle class.

All of these experts echo the point I am making: You cannot tax the rich enough to cover all the spending. Inevitably, what all of this is leading to is that the middle class will fall victim to massive taxation.

I will put this into more tangible terms by examining how much the tax rate would need to rise to make up for only this year's projected budget deficit—just this year's projected budget deficit. The deficit for this year alone is an eye-popping $1.8 trillion. This does not even take into consideration the more than $12 trillion public debt we currently owe.

Here is what would have to happen to the tax rate. The rates for the top four brackets would skyrocket from the current rates of 35 percent, 33 percent, 28 percent, and 25 percent to an alarming 90 percent across the board. Imagine, people would have to work until Thanksgiving just to pay their taxes.

Some may say: Well, this is great. Tax the rich because they can afford to pay more in taxes. Yet those making up the third and fourth brackets from the top can hardly be characterized as rich.

Let's look at who actually falls in those income brackets. Currently, for tax year 2008, people who fall under the 25-percent bracket earn about $32,000 to $78,000.

Does anyone want to come to the Senate floor and make the case that somebody making $32,000 a year in Nebraska is rich? The average salary in Nebraska is $35,000. I do not know anyone who would suggest that only wealthy people fall within the bracket.

The average Nebraskan would have something to say about that in terms of whether they are wealthy. Let's look at the next bracket, those taxed at 28 percent. The income levels for this bracket are roughly $78,000 and $164,000 for singles. For married couples, it is $131,000 to $200,000. What does that mean? This means that a landscape architect in Nebraska making $75,000 a year, hypothetically, married to an emergency room nurse making $59,000 a year would fall into a 90-percent tax rate. Again, I suggest if you asked this couple, I am quite confident they would not describe themselves as wealthy. Taxing the middle class to the tune of 90 percent would bring this economy to its knees.

There is some notion in America that we, the people, should be the masters of our own economic success. If you tax someone at a 95-percent rate, you take away the economic incentive to be innovative, to strive for greater success. Eventually you end up with slim or no productivity or competitiveness. Yet this administration keeps spending as though it is monopoly money. Just this week, more directions: Get that money